

55. Further, the Applicants state that AT&T has no current presence, and thus would be a new entrant, in 49 of the 79 markets,¹⁹⁰ and has only a minor presence in the remaining markets.¹⁹¹ In particular, the Applicants argue that the transaction would not diminish competition in Montana, North Dakota, South Dakota, and Wyoming because AT&T currently offers little or no retail service in these states.¹⁹² The Applicants also assert that in the 79 AT&T Divestiture Markets, Sprint Nextel and many other licensees have sufficient spectrum to build out their facilities.¹⁹³ Further, they state that Sprint Nextel and T-Mobile provide service in all or part of 60 and 20 of these CMAs, respectively.¹⁹⁴

56. The Applicants also specifically analyze the potential for unilateral effects for the one CMA that they identified where, post-transaction, AT&T would exceed the spectrum aggregation screen.¹⁹⁵ The Applicants identify the rival service providers in this CMA and provide details of their spectrum holdings and network coverage.¹⁹⁶ The Applicants argue that there are no competitive concerns in this CMA or at the national level where there is intense competition for wireless subscribers.¹⁹⁷ Further, the Applicants argue that there is no constraint on spectrum availability in any of the CMAs subject to this transaction.¹⁹⁸

57. *Discussion.* Generally, we do not find it likely that AT&T would be able to raise prices unilaterally or otherwise behave anticompetitively as a result of this transaction. Our analysis finds that in 65 of the 79 CMAs, AT&T currently either has no market share at all or has a market share of less than [REDACTED] percent, and therefore this proposed transaction would not change the number of available service providers in these CMAs.¹⁹⁹ We note that in 22 of these 65 markets, post-transaction there will continue to be only two service providers (with AT&T effectively becoming one of these as it replaces ALLTEL),²⁰⁰ and the proposed transaction would not reduce the number of service providers

¹⁹⁰ *Id.* at 29 (noting that this transaction is not a combination of two wireless providers but a transfer of Divestiture Assets).

¹⁹¹ *Id.*

¹⁹² Joint Opposition at 8.

¹⁹³ *Id.* at 14.

¹⁹⁴ *Id.* at 9.

¹⁹⁵ Application, Public Interest Statement at 21. As noted above, the Applicants originally identified two CMAs where post-transaction AT&T would exceed the spectrum aggregation screen but later amended their application to identify only one CMA where post-transaction AT&T would exceed the spectrum aggregation screen. *See supra* note 158.

¹⁹⁶ *Id.* (stating that Verizon Wireless, Sprint Nextel, T-Mobile, and Denali Spectrum hold spectrum along with three affiliates of local exchange carriers – CenturyTel, Agri-Valley, and Nsightel – in these CMAs).

¹⁹⁷ Application, Public Interest Statement at 23.

¹⁹⁸ *Id.* at 30. The Applicants note that if there is more need for CDMA coverage in certain areas within the AT&T Divestiture Markets, Sprint Nextel and other licensees have sufficient spectrum to build out their networks. Joint Opposition at 14.

¹⁹⁹ There are 54 CMAs where AT&T's market share is [REDACTED] percent.

²⁰⁰ The 22 CMAs where there would be only two service providers with more than a [REDACTED] percent market share are: CMA289 Rapid City, SD; CMA298 Bismarck, ND; CMA299 Casper, WY; CMA351 Colorado 4 - Park; CMA354 Colorado 7 - Saguache; CMA419 Iowa 8 - Monona; CMA482 Minnesota 1 - Kittson; CMA524 Montana 2 - Toole; CMA529 Montana 7 - Fergus; CMA547 Nevada 5 - White Pine; CMA634 South Dakota 1 - Harding; CMA635 South Dakota 2 - Corson; CMA636 South Dakota 3 - McPherson; CMA638 South Dakota 5 - Custer; CMA639 South Dakota 6 - Haakon; CMA640 South Dakota 7 - Sully; CMA642 South Dakota 9 - Hanson; (continued....)

with sufficient presence, coverage, or capacity. In these CMAs, there is sufficient spectrum currently licensed to other nationwide and regional, local, and small providers that additional entry is possible.

58. We find that a number of market conditions may affect whether AT&T may be more able to unilaterally raise price or decrease service as a result of the transaction, including product differentiation and substitutability and the presence and capacity of rival providers in the market.²⁰¹ We note that there is considerable variation across local geographic markets with regard to these factors, and it is difficult to generalize whether AT&T would be able to unilaterally raise prices in specific markets. Therefore, we take the possibility of unilateral effects into account in our analysis of specific markets by carefully scrutinizing, among other variables, the presence and capacity of rival carriers. Our analysis is discussed below in Section V.C.2.

3. Coordinated Effects

59. *Background.* In markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.²⁰² Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.²⁰³ Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.²⁰⁴

60. RTG claims that coordinated interaction may occur because of the increased concentration in the wireless industry.²⁰⁵ RTG argues that the Applicants will be able to tacitly coordinate on price because of the lack of viable competition from other wireless providers.²⁰⁶ RTG argues that in markets where the Applicants are the dominant providers with no third operator to offer a viable alternative, AT&T and Verizon Wireless have the incentive to adjust their prices upwards for existing and new mobile customers.²⁰⁷

61. The Applicants claim that coordinated effects are unlikely because there is no change in the number of facilities-based competitors in the majority of the AT&T Divestiture Markets, and in the remaining CMAs, the transaction will make AT&T a stronger facilities-based competitor.²⁰⁸ Also, the

(Continued from previous page) _____
CMA675 Utah 3 - Juab; CMA718 Wyoming 1 - Park; CMA719 Wyoming 2 - Sheridan; CMA720 Wyoming 3 - Lincoln; and CMA722 Wyoming 5 - Converse.

²⁰¹ See *AT&T-Centennial Order*, 24 FCC Rcd at 13941 ¶ 58; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84-85.

²⁰² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

²⁰³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

²⁰⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

²⁰⁵ RTG Petition at 4-6 (stating that the CMRS industry is sliding towards a *de facto* duopoly).

²⁰⁶ *Id.* at 6-7 (arguing that in some census blocks, there is competition only between the two largest nationwide CMRS providers, AT&T and Verizon Wireless, and this may increase the risk of tacit coordination).

²⁰⁷ *Id.* at 7 (stating that mobile consumers face reduced choice when the only CMRS providers are Verizon Wireless and AT&T).

²⁰⁸ Application, Public Interest Statement at 33.

Applicants argue that coordinated interaction is unlikely due to product heterogeneity, uncertain future demand, and the difficulty of detecting and punishing any deviation from the collusive agreement.²⁰⁹

62. *Discussion.* We find that a number of market conditions may affect whether coordinated interaction is more likely as a result of the transaction, including the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick providers in the market.²¹⁰ We note that there is considerable variation in many of the markets with regard to the number and identity of competing carriers, firm homogeneity, and the presence of network capacity. Because of this local variation, it is difficult to generalize about the impact of the transaction in facilitating coordinated interaction to restrict competition on price or non-price terms in specific markets. Therefore, we take the possibility of coordinated interaction into account in our analysis of markets identified by our initial screens by carefully scrutinizing, among other variables, the presence and capacity of rival carriers. As discussed in orders concerning previous transactions, these general findings underpin the market-by-market analysis discussed below.²¹¹

C. Market-by-Market Analysis

1. Analytical Standard

63. In this section, we examine the effects of the transaction on the 11 local markets identified by our initial screen.²¹² In undertaking this market-by-market analysis, we consider variables that are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.²¹³ These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.²¹⁴ In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.²¹⁵ We derive market shares and HHIs from our analysis of data compiled in our NRUF database. We derive network coverage from American Roamer and U.S. Census data, and we obtain spectrum holdings from our licensing databases and the Application. In addition, we examine data from our LNP database²¹⁶

²⁰⁹ *Id.* at 33-34.

²¹⁰ See *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-64.

²¹¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

²¹² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

²¹³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21593-99 ¶¶ 184-200.

²¹⁴ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 91.

²¹⁵ See, e.g., *id.*

²¹⁶ This information is provided to the Commission by NeuStar.

through December 30, 2008.²¹⁷ We also consider the uniformity of competitive conditions in each market. Thus, in some instances, we may find that the transaction is not harmful to competition in a market if the potential harm is confined to a small enclave in the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.²¹⁸

2. Results of Market-Specific Analysis

64. After performing a market-by-market analysis, and given AT&T's commitment to divest 15 megahertz of spectrum in one Michigan CMA, we find that, in the 11 markets identified by the initial screen, there are no competitive concerns requiring remedy. Post-transaction in each of these 11 markets, there are a sufficient number of competitors present with thoroughly built-out networks and the ability to offer competitive service. Therefore, we conclude, based on the various particular facts in each of these markets, that the proposed transaction would be unlikely to make it profitable for AT&T to raise prices and restrict output or to engage in coordinated actions with another provider. The presence and capacity of rival service providers are such in these markets that the response of rival service providers would likely be sufficient to deter any unilateral actions by AT&T.²¹⁹ Below is a more detailed analysis of the 11 markets identified by our initial screens.

65. CMAs 322, 483, 650, and 676. In four of the eleven markets triggered by the HHI screen – CMA322 Arizona 5 - Gila, CMA483 Minnesota 2 - Lake of the Woods, CMA650 Tennessee 8 - Johnson, and CMA676 Utah 4 - Beaver – we find it unlikely that AT&T would be able to engage in anticompetitive activity primarily because of the relatively low market share, between [REDACTED] percent and [REDACTED] percent (depending on the market), that it would have post-transaction. Generally, service providers with market shares of less than 30 percent are unlikely to be able to successfully raise price or otherwise behave unilaterally in an anticompetitive manner. Further, in two of the markets (CMA483 Minnesota 2 and CMA650 Tennessee 8), the number of competitors that cover a sufficient portion of the population would not change. Although the number of competitors that cover more than 70 percent of the population would be reduced in the other two markets, there would be five competitors in one (CMA676 Utah 4) and four in the other (CMA322 Arizona 5). In all four of these markets, there would be no change in the number of competitors covering 50 percent or more of the land area. Therefore, we conclude that other providers have sufficient presence and capacity in these markets, that it is unlikely that AT&T would behave in an anticompetitive manner.

66. CMA262. CMA262 Danville, VA is non-rural²²⁰ and is comprised of a single county and a city. In terms of market share and population covered, the number of competitors would be reduced from six to five,²²¹ and there would be no change in terms of land area covered. ALLTEL is by far the

²¹⁷ This information includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider.

²¹⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75 n.288; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17488 ¶ 92; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 175602-3 ¶ 80; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

²¹⁹ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17490-91 ¶ 98; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17603 ¶ 82. Application of the initial screen on a CEA basis does not identify any potential markets of concern that are not also identified by CMA-based application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs.

²²⁰ This CMA has a population of 110,000 and a population density of 108 POPs per square mile.

²²¹ This reflects service providers with market shares of [REDACTED] percent or greater.

largest provider in this CMA, with more than a [REDACTED] percent market share, while the remaining five providers' market shares are only between [REDACTED] and [REDACTED] percent. Combining ALLTEL's share with AT&T's existing [REDACTED] percent share yields a combined market share of approximately [REDACTED] percent, while Verizon Wireless, the next largest competitor, holds only an approximate [REDACTED] percent share. Although there is a significant difference between the combined entity's market share and the shares of the other service providers in the market, any attempt by the post-transaction entity to engage in anticompetitive behavior would likely be unsuccessful because customers have four other competitors with sufficient coverage in this market from which to choose. In addition to these providers, we note that another provider, U.S. Cellular, has a significant market share in all of the surrounding CMAs. Although U.S. Cellular does not currently provide facilities-based service at this time in the Danville, VA CMA, it does hold a 10 megahertz PCS license and a 12 megahertz 700 MHz license, and may serve as a further disciplinary force despite not having facilities because it could potentially enter this market as a facilities-based provider in the near term. Therefore, we find there are several providers in the market with sufficient presence and capacity, as well as a potential entrant, that could discipline the market if AT&T were to behave in an anticompetitive manner.

67. *CMA341.* The California 6 - Mono CMA is extremely rural²²² with a small population, and is comprised of two counties with extensive Federal Lands. While the transaction would reduce the number of competitors from four to three in terms of market share, there would be no change in terms of the number of providers covering at least 70 percent of the population or 50 percent or more of the land area.²²³ This transaction would combine AT&T, the [REDACTED] largest provider in terms of market share, with ALLTEL, the [REDACTED] largest, to give AT&T a market share of [REDACTED] percent and Verizon Wireless a share of [REDACTED] percent. AT&T's acquisition of the divestiture assets in this CMA would make it a stronger competitor against Verizon Wireless in this market because it would increase AT&T's population and land area coverage. Further, given the population density and size of this market, we find it unlikely that Verizon Wireless or AT&T could profitably raise prices, decrease service, or engage in any type of coordinated interaction. Even if post-transaction, AT&T were to attempt to behave in an anticompetitive manner, there would be two other providers that would cover 70 percent or more of the population, and these providers would have sufficient presence and capacity to discipline the market. We also find public interest benefits in AT&T transitioning the divested network from CDMA to GSM. The transition would result in a GSM network covering approximately 46 percent of the land area of this CMA. T-Mobile, the only other GSM service provider in this CMA, covers less than 8 percent of the land area.

68. *CMAs 246 and 313.* We evaluate the two Alabama CMAs flagged by the initial screen both individually as well as a cluster because DOJ required these markets to be sold as a cluster. CMA246 Dothan, AL is a non-rural market²²⁴ and although this transaction would reduce the number of competitors in the market, there would be five competitors, post-transaction, in terms of market share, population covered, and land area covered. Post-transaction, AT&T would hold a [REDACTED] percent market share. Therefore, we find that competitive harm is unlikely in this CMA. The other CMA in the Alabama Cluster, CMA313 Alabama 7 - Butler, is rural.²²⁵ The number of competitors in this market would be reduced from six to five in terms of market share,²²⁶ with no change in the number of providers

²²² This CMA has a population of 30,000 and a population density of 2 POPs per square mile.

²²³ There are no service providers in this market that cover 50 percent or more of the land area.

²²⁴ This CMA has a population of 138,000 and a population density of 120 POPs per square mile.

²²⁵ This CMA has a population of 172,000 and a population density of 39 POPs per square mile.

²²⁶ This reflects service providers with market shares of [REDACTED] percent or greater.

covering 70 percent of the population or 50 percent of the land area. ALLTEL is by far the largest provider in this CMA, with a [REDACTED] percent market share, with the remaining five providers' market shares between [REDACTED] and [REDACTED] percent. Combining ALLTEL's share with AT&T's existing [REDACTED] percent share yields a combined market share of approximately [REDACTED] percent, while Southern LINC and Verizon Wireless, the next two largest competitors, hold only an approximate [REDACTED] and [REDACTED] percent share, respectively.

69. When analyzing the two CMAs as a cluster, the transaction would reduce the number of competitors from six to five in terms of market share, with no change in terms of population or land area coverage. AT&T's post-transaction market share would be [REDACTED] percent, with the difference between AT&T's share and the next largest provider, Verizon Wireless, being slightly more than [REDACTED]. Therefore, we find it unlikely that competitive harm would occur in these markets individually or as a cluster, and that there are four additional competitors with sufficient presence and capacity to discipline the market in the event AT&T would behave in an anticompetitive manner.

70. *CMAs 181, 486, and 476.* CMA181 Muskegon, MI and CMA478 Michigan 7 - Newyago were flagged by the HHI screen only.²²⁷ For both of these CMAs, the number of competitors would be reduced from four to three in terms of market share,²²⁸ and post-transaction AT&T would hold an approximate [REDACTED] percent share in the Muskegon CMA and an approximate [REDACTED] percent share in the Michigan 7 CMA. For the Muskegon CMA, this transaction would result in a reduction from four to three providers with sufficient population and land area coverage, while in the Michigan 7 CMA, there is no change in the number of providers with sufficient population and land area coverage. In sum, although the number of competitors in both of these markets would be reduced as a result of this transaction, we find that, based on market share and network coverage, it is unlikely that AT&T would be able to behave in an anticompetitive manner.

71. CMA476 Michigan 5 - Manistee was identified by both the HHI and spectrum screens. This is a rural market north of the Muskegon CMA.²²⁹ The number of competitors would be reduced from four to three in terms of market share. Combining ALLTEL's [REDACTED] percent market share with AT&T's existing [REDACTED] percent share would give AT&T an approximate [REDACTED] percent market share while Verizon Wireless holds just over a [REDACTED] percent share and Sprint has a share of just under [REDACTED] percent. In terms of population and land area coverage, there is no change in the number of providers, and none of the providers cover 50 percent or more of the land area, although AT&T and Verizon Wireless cover 49 and 48 percent, respectively. In sum, we find that, based on market share and network coverage, it is unlikely that AT&T would be able to behave in an anticompetitive manner.

72. With regard to spectrum aggregation, as proposed in the Application, AT&T would hold between 130 and 145 megahertz of spectrum in this CMA on a county-by-county basis. More recently, however, AT&T has voluntarily agreed to divest 15 megahertz of licensed spectrum in this CMA.²³⁰

²²⁷ CMA181 Muskegon, MI is a non-rural market with a population of approximately 200,000 and a population density of approximately 184 POPs per square mile. CMA478 Michigan 7 - Newyago is a rural market due east of the Muskegon CMA with a population of approximately 255,000 and a population density of approximately 77 POPs per square mile.

²²⁸ In CMA181 Muskegon, MI, MetroPCS has launched service with its AWS-1 spectrum, but has a market share of less than [REDACTED] percent. Given the concentration of population in the CMA, MetroPCS covers approximately 60 percent of the population by covering 12 percent of the land area.

²²⁹ This CMA has a population of 169,000 and a population density of 42 POPs per square mile.

²³⁰ AT&T Commitment Letter at 2.

Accordingly, we do not need to determine whether AT&T's post-transaction spectrum aggregation would result in competitive harm. After the voluntary divestiture, AT&T would hold 115 to 130 megahertz on a county-by-county basis in this CMA, and its spectrum holdings would no longer be identified by the spectrum aggregation screen. As part of AT&T's commitment to divest 15 megahertz of spectrum, it will file the necessary transfer application within six months of the consummation of the transaction.²³¹ In the absence of an application being filed within six months of the closing, AT&T will surrender a license or licenses including 15 megahertz of spectrum to the Commission.²³² We condition grant of the transaction applications before us in this proceeding on AT&T's compliance with this commitment.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

73. In addition to assessing the potential competitive harms of the proposed AT&T-Verizon Wireless transaction, we also consider whether the proposed assignment and transfer of control of the subject wireless licenses and related authorizations held by Verizon Wireless is likely to generate verifiable, transaction-specific public interest benefits.²³³ In doing so, we ask whether AT&T would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the transaction.²³⁴ As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.²³⁵

A. Analytical Framework

74. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products."²³⁶ This same analysis applies to an acquisition of assets like that contemplated by the proposed transaction before us. Under Commission precedent, the Applicants bear the burden of demonstrating

²³¹ *Id.*

²³² *Id.* We find that AT&T's commitment to implement its voluntary divestiture of spectrum in six months represents a reasonable time period. Divestiture to a Management Trustee is not necessary here, where only spectrum, not a business unit, is to be divested.

²³³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²³⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²³⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 88; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12504 ¶ 92; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74.

²³⁶ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.²³⁷

75. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.²³⁸ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”²³⁹ Furthermore, as the Commission has explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”²⁴⁰ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”²⁴¹ The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.²⁴²

76. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.²⁴³ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”²⁴⁴ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the transaction.²⁴⁵

²³⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

²³⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²³⁹ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁴⁰ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁴¹ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615-16 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

²⁴² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

²⁴³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

²⁴⁴ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is (continued....)”).

B. Discussion

77. The Applicants assert that the proposed transaction will result in a number of public interest and consumer benefits. The Applicants state that the transaction “will make available AT&T’s 3G UMTS technology and other next-generation wireless services in rural areas, which is a key goal of the Administration’s broadband policies.”²⁴⁶ The Applicants also assert that existing AT&T customers will benefit from the transaction via the expansion of GSM network coverage and the resulting improvement of wireless calling quality.²⁴⁷

78. The Applicants state that the proposed transaction will particularly benefit rural customers, as 49 out of the 79 AT&T Divestiture Markets are located in Kansas, Montana, North Dakota, South Dakota, and Wyoming, where AT&T currently does not offer any retail wireless plans.²⁴⁸ In these 49 markets, AT&T will become an active market participant for the first time.²⁴⁹ Customers in these CMAs will gain access to a broad range of services available on AT&T’s national network, which serves more than 78 million customers in the United States.²⁵⁰ As a result, the proposed transaction will enlarge subscribers’ in-network calling community to over 81 million.²⁵¹

79. *3G Broadband Network Deployment.* AT&T plans [REDACTED].²⁵² AT&T asserts that, as a result of its planned overbuild, subscribers in the AT&T Divestiture Markets will be able to enjoy the benefits of AT&T’s 3G broadband network, which already serves nearly 350 major metropolitan areas.²⁵³ AT&T states that its 3G UMTS equipment and software delivers data speeds greater than the current Verizon Wireless and ALLTEL EVDO networks.²⁵⁴ AT&T claims that this equipment and software also enables simultaneous talking and surfing the web and using e-mail.²⁵⁵ In addition, subscribers in the divested areas will gain unlimited and free access to AT&T’s Wi-Fi network

(Continued from previous page)

likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

²⁴⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117.

²⁴⁶ Application, Public Interest Statement at 10.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 11.

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 12.

²⁵¹ AT&T First Partial Response at 23.

²⁵² AT&T Second Partial Response of Dec. 17, 2009 at 5; AT&T Supplemental Response of June 2, 2010 at 2.

²⁵³ Application, Public Interest Statement at 13.

²⁵⁴ AT&T First Partial Response at 5; AT&T Second Partial Response of Dec. 17, 2009 at 4; see also AT&T, About Us, AT&T Sets the Record Straight on Verizon Ads, available at <http://www.att.com/gen/press-room?pid=14002> (last visited June 21, 2010).

²⁵⁵ AT&T First Partial Response at 5; see also AT&T, Media News Room, Media Kit: Wireless Networks, The Nation’s Fastest 3G Network, available at <http://www.att.com/gen/press-room?pid=1941> (last visited June 21, 2010).

at more than 20,000 hotspots in the United States and more than 125,000 hotspots worldwide through its roaming agreements.²⁵⁶

80. *Post-Transaction Rate Plans.* AT&T states that once its post-paid customers in the AT&T Divestiture Markets are transitioned to its GSM network and receive a GSM-compatible wireless handset,²⁵⁷ AT&T will be able to offer them a wider variety of rate plans, including AT&T's unlimited calling rate plan (which includes roaming), a variety of prepaid options,²⁵⁸ "family plans," and data plans.²⁵⁹ Post-transaction, such customers will also be able to roll over unused minutes to the next month, a feature currently not available in the former ALLTEL and RCC Wireless systems.²⁶⁰

81. *Open Applications Policy.* AT&T contends that the transaction will allow customers in the divestiture CMAs to benefit from AT&T's Open Applications Policy.²⁶¹ This policy will afford customers in the AT&T Divestiture Markets access to more application choices, more handset options, and a more robust network on which to experience downloaded applications.²⁶² AT&T notes, however, that a customer's ability to access a specific application will be determined by a variety of factors, such as the customer's location, handset, service plan, and willingness to pay for certain applications.²⁶³

82. *Handsets with Advanced Services Capabilities.* The Applicants assert that as a result of the proposed transaction, customers in the AT&T Divestiture Markets will have access to all handset offerings and services available to AT&T customers at that time.²⁶⁴ As of November 2009, AT&T offered [REDACTED] handset models, [REDACTED] of which support UMTS technology for 3G services.²⁶⁵ The Applicants maintain that, following AT&T's conversion of ALLTEL's network in the majority of the AT&T Divestiture Markets to global GSM standards and the rollout of 3G GSM services in all of the areas to be acquired, affected customers will be able to use 3G smartphones, as well as

²⁵⁶ AT&T First Partial Response at 25; *see also* Application, Public Interest Statement at 16; AT&T, Media News Room, Media Kit: Wi-Fi, Overview, *available at* <http://www.att.com/gen/press-room?pid=17541> (last visited June 21, 2010).

²⁵⁷ AT&T First Partial Response at 18. *See infra* Section VII.C for a discussion of AT&T's plans for transitioning existing CDMA customers in the AT&T Divestiture Markets.

²⁵⁸ Application, Public Interest Statement at 15.

²⁵⁹ AT&T First Partial Response at 22.

²⁶⁰ Application, Public Interest Statement at 15; AT&T First Partial Response at 23.

²⁶¹ AT&T First Partial Response at 18-21; *see also* *AT&T-Centennial Order*, 24 FCC Red at 13957 ¶ 101.

²⁶² *See* Letter from Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T, and Jonathan V. Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-246, at 20 (May 28, 2009) (describing AT&T's Open Applications Policy).

²⁶³ AT&T First Partial Response at 18 n.6, 19; *see also* AT&T, Explore, Wireless Data Service Terms and Conditions, *available at* <http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp> (last visited June 21, 2010).

²⁶⁴ Application, Public Interest Statement at 16; *see also* AT&T First Partial Response at 25.

²⁶⁵ AT&T First Partial Response at 24. These numbers are based on defining an individual handset/device as a unique manufacturer and unique model designation. *Id.* at n.21. If each color of a handset/device available in given model designation were treated as a separate model, AT&T would have [REDACTED] handset models, [REDACTED] of which support UMTS technology for 3G services. *Id.* at n.21.

innovative services and applications, such as access to over 90,000 pieces of mobile content (e.g., mobile banking, social networking, and GPS services)²⁶⁶ from more than 115 content providers.²⁶⁷

83. *Reduced Roaming Costs.* The Applicants assert that the transaction will result in more on-net usage by both AT&T's current customers as well as customers in the AT&T Divestiture Markets, which in turn will reduce reliance on roaming.²⁶⁸ The elimination of the costs of administering roaming will lower the marginal cost of providing service and will translate into either a lower price or increased service to customers.²⁶⁹ AT&T estimates benefits to customers with a net present value of at least [REDACTED].²⁷⁰

84. *Improved International Roaming.* The Applicants assert that the proposed transaction will result in an increased availability of international roaming at lower rates for customers in the AT&T Divestiture Markets.²⁷¹ Currently, ALLTEL maintains roaming agreements that provide for direct interconnection for its CDMA customers with providers only in Mexico, Canada, and parts of the Caribbean.²⁷² Roaming in over 160 other countries is provided through third-party agreements, but it requires that customers purchase a SIM card and the GSM-compatible BlackBerry 8830 World Edition Smartphone.²⁷³ In contrast, AT&T claims that it has an extensive global footprint as its GSM/HSPA network is the worldwide standard for wireless communication.²⁷⁴ As a result of the proposed transaction, customers in the AT&T Divestiture Markets will have access to more than 630 international roaming agreements, will be able to use roaming voice services and roaming data services in 215 and 170 countries, respectively, and will have access to 3G GSM coverage in more than 80 markets.²⁷⁵

85. *Improved Disaster Preparedness.* The Applicants contend that the transaction will improve AT&T's ability to prepare for and respond to emergencies, such as natural disasters, acts of terrorism, and others.²⁷⁶ AT&T states that it possesses unique disaster recovery capabilities and has many emergency preparedness resources, such as two mobile command centers, mobile generators, and mobile cell sites that are connected via satellite or landline.²⁷⁷ AT&T has a National Disaster Recovery ("NDR") Team in charge of the physical recovery of AT&T's network.²⁷⁸ The NDR Team maintains a fleet of

²⁶⁶ Application, Public Interest Statement at 16.

²⁶⁷ AT&T First Partial Response at 25; *see also* Reply Comments of AT&T Inc., GN Docket No. 09-191, WC Docket No. 07-52, at 66 n.111 (filed Apr. 26, 2010).

²⁶⁸ Application, Public Interest Statement at 16; AT&T Second Partial Response of Dec. 17, 2009 at 4.

²⁶⁹ Application, Public Interest Statement at 16-17.

²⁷⁰ AT&T Second Partial Response of Dec. 17, 2009 at 17. The net present value of the avoided roaming costs for both ALLTEL's CDMA and Verizon Wireless/RCC's GSM subscribers is [REDACTED]. *Id.* at 18. Based on economic theory, at least 50 percent of these cost savings will be passed onto subscribers. *Id.*

²⁷¹ Application, Public Interest Statement at 17.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 18.

²⁷⁶ *Id.* at 12, 18.

²⁷⁷ *Id.* at 18.

²⁷⁸ AT&T First Partial Response at 15; *see also* AT&T, Program Background, Network Disaster Recovery, available at <http://www.corp.att.com/ndr> (last visited June 21, 2010).

specially designed trailers with mobile recovery equipment ready to respond to any emergency incident in the United States within 12 to 14 hours, and to recover or increase network capacity following a disaster.²⁷⁹ Cells on Light Trucks and Cells on Wheels are used to provide wireless communications equipment to support first responders, local Emergency Operation Centers, government agencies, and AT&T's customer network.²⁸⁰ As a result of this transaction, AT&T will be expanding its presence into new markets, and it states that it will be in an even stronger position to respond quickly when emergencies occur in these areas.²⁸¹

C. Conclusion

86. As noted above, the proposed transaction does not present any competitive or other harms. As a result, we require a lesser showing of public interest benefits by the Applicants. In the end, we conclude, based on the record before us and as discussed above, that this transaction is likely to result in meaningful transaction-specific public interest benefits that support the Commission approving the proposed transaction.²⁸²

VII. OTHER ISSUES

A. Roaming

87. *Background.* Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and uses the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.²⁸³ Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone

²⁷⁹ AT&T First Partial Response at 16; *see also* AT&T, Hurricane Readiness, *available at* http://www.business.att.com/content/productbrochures/att_hurricane_readiness.pdf (last visited June 21, 2010).

²⁸⁰ AT&T First Partial Response at 16; *see also* Robert Desiato, Director of Network Disaster Recovery, "AT&T Network Disaster Recovery: Department of Homeland Security" 15, *available at* https://luxlead.luxcg.com/LuxLEAD/DHS/docs/2_DHS_Chicago_042309.pdf (last visited June 21, 2010).

²⁸¹ Application, Public Interest Statement at 19.

²⁸² One of the conditions imposed by the *Verizon Wireless-ALLTEL Order* is that Verizon Wireless comply with its voluntary commitment to phase out its high-cost universal service support in equal 20 percent increments over a period of five years. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17529-32 ¶¶ 192-197. The order did not address whether this condition would apply to properties Verizon Wireless acquires after the Verizon Wireless-ALLTEL transaction. We clarify that it does not apply to such after-acquired properties for three reasons. First, Verizon Wireless committed to phase out high-cost universal service support "for any properties which Verizon Wireless retains, over a five year period." Letter from John T. Scott, III, Vice President & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95, at 1 (filed Nov. 3, 2008). We read that language as excluding properties that Verizon Wireless acquires after the Verizon Wireless-ALLTEL transaction. Second, applying the condition to after-acquired properties would not address any merger-specific harm. Third, if the condition were to apply to after-acquired properties, Verizon Wireless would have to immediately terminate high-cost universal service support for any properties it acquires more than five years after the Verizon Wireless-ALLTEL transaction, which would be inconsistent with the incremental reductions contemplated by the order.

²⁸³ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13963 ¶ 120; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; *see also* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket Nos. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

subscribers to place calls while roaming as they do in their home coverage area, by simply entering the phone number and pressing “send.”

88. Under the Commission’s automatic roaming rules, upon a reasonable request, CMRS carriers are obligated to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to sections 201 and 202 of the Communications Act.²⁸⁴ The automatic roaming obligations extend to real time, two-way switched voice and data service that is interconnected with the public switched network.²⁸⁵ It also applies to push-to-talk and text messaging services offered by CMRS carriers.²⁸⁶ In the 2007 *Data Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services offered by CMRS carriers.²⁸⁷ In the 2010 *Roaming Order on Reconsideration* adopted on April 21, 2010, the Commission modified the automatic roaming obligation that the Commission adopted for voice and related services in the 2007 *Roaming Report and Order* by eliminating the home roaming exclusion adopted in that order.²⁸⁸ In the 2010 *Data Roaming Second Further Notice*, the Commission sought comment on broadening the scope of the proceeding to non-CMRS providers and whether to extend roaming obligations to data services that are provided without interconnection to the public switched network – including mobile broadband services.²⁸⁹ The data roaming proceeding is pending.

89. Some commenters claim that AT&T’s plans to transition the divestiture network from CDMA to UMTS would eliminate CDMA roaming coverage or reduce the number of roaming partners to one (Verizon Wireless) in parts of the 79 AT&T Divestiture Markets, and as a result roaming rates may increase.²⁹⁰ These commenters argue that the divested CDMA network is essential for providing

²⁸⁴ 47 C.F.R. § 20.12(d). See also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4190 ¶ 18 (2010) (“*Roaming Order on Reconsideration*” and “*Data Roaming Second Further Notice*,” respectively); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15826 ¶ 23 (2007) (“*Roaming Report and Order*” and “*Data Roaming Further Notice*,” respectively).

²⁸⁵ 47 C.F.R. § 20.12(a)(2). See also *Roaming Order on Reconsideration*.

²⁸⁶ 47 C.F.R. § 20.12(a)(2).

²⁸⁷ *Roaming Further Notice*, 22 FCC Rcd at 15845-47 ¶¶ 77-81.

²⁸⁸ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190 ¶ 18. In the *Roaming Report and Order*, the Commission established a home roaming exclusion relating to this automatic roaming obligation, stating that a would-be host CMRS carrier is not required to provide automatic roaming to a requesting CMRS carrier in the requesting carrier’s home market. See *Report and Order*, 22 FCC Rcd at 15835 ¶ 48.

²⁸⁹ *Data Roaming Second Further Notice*, 25 FCC Rcd at 4212 ¶ 62.

²⁹⁰ Sprint Nextel Comments at 2-3, Ex. A; Cox Reply at 4-5; PSC Reply at 4; RTG Reply at 5; SDPUC Reply at 6; Sprint Nextel Reply at 2-4; *Ex Parte* Letter from Caressa Bennet, General Counsel, Rural Telecommunications Group, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (Mar. 4, 2010) (“RTG Mar. 4, 2010 *Ex Parte*”). Sprint Nextel claims CDMA coverage would be eliminated in approximately 32 percent of the square mileage that ALLTEL originally covered and that competition for wholesale CDMA roaming would be reduced in 59 percent of the same square mileage. Sprint Nextel Comments at 3, 10-12; *Ex Parte* Letter from Maria Cattafesta, Senior Counsel, Sprint Nextel, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (Mar. 17, 2010) (“Sprint Nextel Mar. 17, 2010 *Ex Parte*”). Cox identifies 57 CMAs where Verizon Wireless would be the only CDMA roaming option post-transaction. Cox Reply at 4-7, Exhibit A; *Ex Parte* Letter from Michael H. (continued....)

customers CDMA roaming services in these markets.²⁹¹ Some parties claim that it is highly unlikely that Sprint Nextel or another carrier would be able to replicate the entire footprint of the divested CDMA network in the foreseeable future because it would not be economically feasible or efficient for them to do so.²⁹² Sprint Nextel claims that even if building a network was economical, the time for it to build a replacement CDMA network would be longer than the one-year transition period.²⁹³

90. The Applicants assert that Verizon Wireless will continue to be a potential CDMA roaming partner in each of the 79 markets, and there are other CDMA service providers in these markets, and that Sprint Nextel's claims are exaggerated.²⁹⁴ The Applicants argue that all spectrum holders that use CDMA technology are potential roaming partners, regardless of whether they already have built out their networks and are offering service,²⁹⁵ and that these other CDMA carriers, and not a GSM carrier like AT&T, are the logical providers of CDMA roaming services.²⁹⁶ According to the Applicants, substantial CDMA network build out will likely occur in the AT&T Divestiture Markets in the next year, including by Verizon Wireless.²⁹⁷ Also, AT&T claims that it is not [REDACTED],²⁹⁸ [REDACTED].²⁹⁹ However, AT&T and Verizon Wireless have entered into a CDMA roaming agreement in which AT&T would provide Verizon Wireless with services using the CDMA transport assets acquired through this

(Continued from previous page) —————

Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel to Cox Communications, to Marlene Dortch, Secretary, Federal Communications Commission, at 5-6 (Feb. 12, 2010) ("Cox Feb. 12, 2010 *Ex Parte*").

²⁹¹ Sprint Nextel Comments at 13; PSC Reply at 3 (stating that given the Applicants' nationwide coverage, they have little incentive to offer fair and reasonable roaming terms, particularly to rural competitors). Cox argues that new entrants must obtain reasonable roaming agreements in order not to be at a substantial competitive disadvantage. See Cox Feb. 12, 2010 *Ex Parte* at 5; see also SDPUC Reply at 6; RTG Mar. 4, 2010 *Ex Parte* at 2-3.

²⁹² Sprint Nextel Comments at 13-17; Cox Reply at 6; Sprint Nextel Reply at 3-4. The total cost to build and operate sites to serve the 79 markets would reach into the hundreds of millions of dollars and would not be offset by large government subsidies of the magnitude ALLTEL had received for its network, and given the low population densities, these markets would likely result in a modest potential revenue stream. Sprint Nextel Comments at 13-17; Sprint Nextel Reply at 3-4.

²⁹³ Sprint Nextel Reply at 4.

²⁹⁴ Joint Opposition at 13. AT&T estimates that, in the AT&T Divestiture Markets, ALLTEL was the only CDMA provider for [REDACTED]. AT&T First Partial Response at 6-12; *Ex Parte* Letter from William E. Cook Jr., Arnold & Porter LLP, Counsel to AT&T, and Nancy J. Victory, Wiley Rein LLP, Counsel to Verizon Wireless, to Marlene Dortch, Secretary, Federal Communications Commission, at 3 (Mar. 12, 2010) ("Applicants Mar. 12, 2010 *Ex Parte* Letter").

²⁹⁵ Applicants Mar. 12, 2010 *Ex Parte* at 4. AT&T provides a list, on a CMA basis, of licensees that use CDMA technology. See AT&T First Partial Response at 7-12. Mark Uhde argues that Sprint Nextel could build out its own network in Montana and would not need to rely on ALLTEL roaming. Comment of Mark Uhde, filed Mar. 25, 2010, at 1 ("Mark Uhde Comments").

²⁹⁶ Applicants Mar. 12, 2010 *Ex Parte* at 4.

²⁹⁷ AT&T Supplemental Response of May 5, 2010 at 3. Verizon Wireless is [REDACTED]. See AT&T Supplemental Response of May 5, 2010 at 3.

²⁹⁸ In the *Verizon Wireless-ALLTEL Order*, the Commission conditioned its approval of the transaction on certain roaming conditions. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17524 ¶ 178.

²⁹⁹ AT&T Second Partial Response of Dec. 17, 2009 at 14. In order to provide [REDACTED]. See AT&T Second Partial Response of Dec. 17, 2009 at 14-15.

transaction that, when combined with services from Verizon Wireless and third parties, would enable the provision of CDMA roaming services.³⁰⁰

91. *Commenters' Proposed Conditions.* Some parties assert that the proposed transaction would cause competitive harm unless the Commission requires certain conditions with respect to AT&T's obligations pertaining to roaming.³⁰¹ Some commenters request that the Commission require the Applicants to provide home roaming and data roaming.³⁰² NTELOS requests that the Commission resolve the pending petitions for reconsideration or clarification of the *Verizon Wireless-ALLTEL Order* prior to grant of these applications.³⁰³ RTG and Sprint Nextel request that the roaming conditions adopted for that transaction be passed through to AT&T for the 79 former ALLTEL markets that AT&T is now seeking to acquire.³⁰⁴ Sprint Nextel initially requested that the Commission impose roaming conditions for a period of three years or until the Verizon Wireless-ALLTEL roaming conditions expire.³⁰⁵ However, in a recent filing, Sprint Nextel states that the elimination of the home roaming exception in the 2010 *Roaming Order on Reconsideration* significantly mitigates its concerns and it no longer requests that AT&T retain the CDMA network post-transition.³⁰⁶ Sprint Nextel, however, continues to seek a condition requiring AT&T to enter into a roaming agreement with Sprint Nextel that replicates the same rates, terms, and conditions as in the Sprint Nextel-ALLTEL roaming agreement.³⁰⁷

92. Cox contends that AT&T should be required to maintain and operate the divested CDMA network for five years or until a next generation LTE network is deployed both by Cox and by carriers in the divested areas, whichever occurs first.³⁰⁸ Further, Cox states that in areas where Verizon Wireless would be the sole CDMA roaming option, Verizon Wireless should be required to offer roaming partners

³⁰⁰ AT&T Second Partial Response of Dec. 17, 2009 at 15. [REDACTED] Verizon Wireless Supplemental Response of Mar. 3, 2010 at 00002235-2236; see also AT&T Commitment Letter at 2.

³⁰¹ See, e.g., Cox Feb. 12, 2010 *Ex Parte* at 3-4; Sprint Nextel Comments at 3-4.

³⁰² RTG Petition at 12; PSC Reply at 5; NTCA Aug. 7, 2009 *Ex Parte* at 4-5. NTCA requests that the conditions apply to all nationwide carriers. See *id.* RTG also argues that the transaction should not be approved until the petitions seeking reconsideration of the *Roaming Report and Order* are resolved, and that if these issues are not resolved prior to grant of these applications, then the Commission should require the Applicants to provide home and data roaming. See RTG Petition at 13-14; RTG Reply at 7-8.

³⁰³ NTELOS Petition at 6. NTELOS also alleges that Verizon Wireless is attempting to renege on the commitments it made in the Verizon Wireless-ALLTEL transaction. *Id.*

³⁰⁴ RTG Reply at 6; Sprint Nextel Comments at 3-4.

³⁰⁵ Sprint Nextel Comments at 18-19; Sprint Nextel Reply at 5-7; Sprint Nextel Mar. 17, 2010 *Ex Parte* at 1. Sprint Nextel requested that the Commission require AT&T to: (1) honor ALLTEL roaming partners' ALLTEL CDMA roaming agreements in their entirety (rates, terms, and conditions) covering the divested CDMA network in the 79 CMAs; (2) provide ALLTEL roaming partners the option to keep the rates set forth in their roaming agreement for the full term of the agreement; (3) not adjust upward the rates in ALLTEL's agreements with ALLTEL roaming partners; and (4) continue to operate and maintain the divested CDMA network in the 79 CMAs.

³⁰⁶ *Ex Parte* Letter from Maria Cattafesta to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (Apr. 29, 2010) ("Sprint Nextel Apr. 29, 2010 *Ex Parte*"). Sprint Nextel claims that the amount of time AT&T will need to transition its network should serve as a sufficient transition period for itself. See *id.*

³⁰⁷ *Id.*

³⁰⁸ Cox Reply at 3, 9; Cox Feb. 12, 2010 *Ex Parte* at 3, 6, 11; see also *Ex Parte* Letter from Michael H. Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel to Cox Communications, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 n.2 (Apr. 28, 2010) ("Cox Apr. 28, 2010 *Ex Parte*"). RTG supports Cox's proposed conditions. See RTG Mar. 4, 2010 *Ex Parte* at 1.

that do not currently have a roaming agreement with either Verizon Wireless or ALLTEL the ability to opt into any existing Verizon Wireless or ALLTEL roaming agreement for three years.³⁰⁹ Cox claims that any concerns about the confidentiality of existing roaming agreements that might arise with respect to an opt-in condition could be addressed, and this condition would not conflict with the Commission's refusal in the 2007 *Roaming Report and Order* to make roaming agreements public because the condition is limited and transaction-specific.³¹⁰ Finally, Cox and Sprint Nextel argue that conditions are warranted in this transaction because the Commission has previously imposed similar conditions, such as in the *AT&T-Centennial Order*, when there was a reduction in the number of CDMA providers in certain markets.³¹¹

93. The Applicants argue that the Commission should reject the proposed roaming conditions.³¹² The Applicants claim that the imposition of roaming conditions would dictate AT&T's choice of technology, and that it is unnecessary given that other CDMA roaming opportunities would continue to be available after the transaction.³¹³ The Applicants also argue that any conditions requiring data roaming should be rejected, and instead should be addressed in the ongoing Commission proceeding on data roaming.³¹⁴ Further, the Applicants contend that the Commission should not dictate the terms of roaming agreements with AT&T because it is not within the scope of this proceeding to determine contractual rights or responsibilities or to guarantee any carrier that it will pay a particular rate.³¹⁵

94. The Applicants argue that there is no basis for Cox's "opt-in" proposal because: (1) it is untimely and not related to the transaction; (2) Cox fails to demonstrate harm in the retail wireless market; (3) the proposal violates rights of carriers not party to the transaction by disclosing confidential terms, conditions, and rates in numerous roaming agreements; and (4) there is no evidence that a provider could not obtain reasonable roaming terms from Verizon Wireless.³¹⁶ The Applicants state that if Verizon Wireless were to refuse to negotiate automatic roaming arrangements on reasonable terms and conditions, then Cox or any other service provider could file a complaint with the Commission.³¹⁷ The Applicants also state that a requirement to maintain and operate the divested CDMA network for a certain period of

³⁰⁹ Cox Reply at 7-9; Cox Feb. 12, 2010 *Ex Parte* at 3-4; Cox Apr. 28, 2010 *Ex Parte* at 2-3; see also RTG Mar. 4, 2010 *Ex Parte* at 1. Cox states that these conditions are necessary to preserve reasonable opportunities to enter into automatic roaming agreements. Cox Reply at 8; see also Cox Feb. 12, 2010 *Ex Parte* at 3-4; Cox Apr. 28, 2010 *Ex Parte* at 2.

³¹⁰ Cox Apr. 28, 2010 *Ex Parte* at 2-3.

³¹¹ Cox and Sprint Nextel both refer to the roaming conditions the Commission imposed in Puerto Rico in the *AT&T-Centennial Order*. See Cox Feb 12, 2010 *Ex Parte* at 8-10; Sprint Nextel Mar. 17, 2010 *Ex Parte* at 1 n.1. Sprint Nextel also refers to the roaming conditions the Commission imposed in the *Verizon Wireless-ALLTEL Order*. See Sprint Nextel Comments at 17.

³¹² Joint Opposition at 10-11; Applicants Mar. 12, 2010 *Ex Parte* at 1-2; see also Mark Uhde Comments at 1.

³¹³ Joint Opposition at 11-12; see also Applicants Mar. 12, 2010 *Ex Parte* at 3-5.

³¹⁴ Joint Opposition at 17.

³¹⁵ *Id.*

³¹⁶ Applicants Mar. 12, 2010 *Ex Parte* at 7-11.

³¹⁷ *Id.* at 11.

time is inconsistent with precedent,³¹⁸ and that the circumstances in the AT&T-Centennial transaction are very different than those here.³¹⁹

95. *Discussion.* We condition our approval of this transaction on AT&T's and Verizon Wireless's commitments to provide roaming service on the ALLTEL CDMA network as set forth below.

96. AT&T commits to negotiate with CDMA roaming partners in good faith and to accommodate reasonable requests for CDMA roaming services at a cell site in accordance with the Commission's roaming rules for as long as AT&T provides CDMA retail or roaming services at that specific cell site.³²⁰ More specifically, for any period during which AT&T continues to provide any automatic CDMA roaming service to Verizon Wireless at a cell site acquired in this transaction, AT&T commits to provide the same type of automatic CDMA roaming service at that same cell site to other facilities-based CDMA carriers upon reasonable request on reasonable terms and conditions.³²¹ Moreover, nothing in AT&T's commitment shall be construed to restrict AT&T from terminating CDMA services at any cell site to all CDMA carriers at any time consistent with AT&T's rights and obligations under its roaming agreement with Verizon Wireless or otherwise to impede AT&T's offering of a HSPA or GSM service.³²² We condition our approval of this transaction on these AT&T commitments.

97. With respect to Verizon Wireless, we condition our approval on the following Verizon Wireless commitments. During the one-year transition period following the closing of this transaction, Verizon Wireless will continue to administer CDMA roaming traffic from other carriers on the divestiture market networks pursuant to its Transition Services Agreement with AT&T, and Verizon Wireless will clear that traffic at the rates, terms, and conditions set forth in its (including ALLTEL's) existing roaming agreement with each carrier.³²³

98. We note that nothing in these commitments will be construed as limiting the rights of any carrier to pursue roaming arrangements pursuant to Commission rules and the remedies they afford. We find that AT&T's and Verizon Wireless's roaming-related commitments are sufficient to provide continuity of CDMA roaming services in the markets subject to this transaction. We do not find the specific facts of the situation warrant a condition imposing an obligation on AT&T to enter into a roaming agreement with Sprint Nextel that replicates the same rates, terms, and conditions as in the Sprint Nextel-ALLTEL roaming agreement. Sprint Nextel would be able to roam either on the Verizon Wireless network under its roaming agreement with Verizon Wireless or, in the alternative, Sprint Nextel could negotiate a roaming agreement with AT&T for CDMA roaming services based on AT&T's roaming commitments above and in accordance with the Commission's roaming rules.³²⁴

99. Further, we decline to adopt the roaming condition proposed by Cox that would require that Cox, and any other new entrants using CDMA technology that do not currently have roaming agreements with Verizon Wireless or ALLTEL, be allowed to opt-in to an existing Verizon Wireless or

³¹⁸ *Id.* at 5.

³¹⁹ *Id.* Unlike in the AT&T-Centennial transaction, the Applicants state that [REDACTED]; [REDACTED]; does not have much in the way of network assets in these markets; [REDACTED]; and faces a more complex network conversion in these markets than in the AT&T-Centennial transaction. *Id.* at 5-6.

³²⁰ AT&T Commitment Letter at 2; *see also* AT&T Supplemental Response of May 5, 2010 at 3.

³²¹ AT&T Commitment Letter at 2; *see also* AT&T Supplemental Response of May 5, 2010 at 3.

³²² AT&T Commitment Letter at 2.

³²³ Verizon Wireless Commitment Letter at 1.

³²⁴ *See* AT&T Commitment Letter at 2.

ALLTEL roaming agreement or that AT&T be required to maintain the CDMA network for five years or until Cox and other providers have deployed LTE. There has been no clear demonstration of how such a requirement would serve the public interest, nor has it been shown why the duty of carriers to provide automatic roaming that the Commission recently reaffirmed and clarified in the *Roaming Order on Reconsideration* will not adequately address the concerns raised by Cox. As the Commission has noted, because the need for automatic roaming services may not always be the same, and the value of roaming services may vary across different geographic markets due to differences in population and other factors affecting the supply and demand for roaming services, it is likely that automatic roaming rates will reasonably vary.³²⁵ The opt-in proposal would also appear to require access to other parties' roaming agreements, which, as is generally the case with commercial agreements, are confidential and negotiated between specific parties.³²⁶ Further, the proposed condition by Cox is not related to a transaction-specific harm. Adopting such a condition could distort competitive market conditions, resulting in favoring some providers over others unjustly and unreasonably.³²⁷

100. Rather, our general roaming policies and rules, as recently revised and clarified, should ensure that Cox and other new entrants can obtain roaming agreements on reasonable terms and conditions. As we have underscored, roaming plays an important role in increasing competition and consumers' access to seamless nationwide mobile services wherever and whenever they choose.³²⁸ As a common carrier service, roaming is subject to the protections afforded by sections 201, 202, and 208 of the Communications Act.³²⁹ Under the Commission's automatic roaming rules, upon a reasonable request, CMRS carriers are obligated to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions. Our recent rule revisions and clarifications are designed to further our goal of enabling carriers to successfully negotiate reasonable roaming agreements.³³⁰ To the extent there is a disagreement between CMRS carriers regarding whether carriers have met their roaming obligations, we have provided additional guidance on factors that may be considered,³³¹ and we stand ready to address and resolve roaming disputes in an expeditious manner.³³²

101. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.³³³ A number of parties

³²⁵ See *Roaming Report and Order*, 22 FCC Rcd at 15833-34 ¶¶ 42-45.

³²⁶ See *id.*, 22 FCC Rcd at 15839-40 ¶ 62 (the Commission declined to impose an affirmative obligation on CMRS carriers to post their roaming rates).

³²⁷ See *id.*, 22 FCC Rcd at 15834 ¶ 44. In the *Roaming Report and Order*, the Commission denied a request by RTG that Tier IV CMRS Providers be offered "most favored" roaming partner rates. See *id.*, 22 FCC Rcd at 15833-34 ¶¶ 41-45.

³²⁸ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4182 ¶ 1.

³²⁹ 47 U.S.C. §§ 201, 202, 208. See also 47 C.F.R. § 20.12(d); *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190 ¶ 18; *Roaming Report and Order*, 22 FCC Rcd at 15826 ¶ 23.

³³⁰ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190-91 ¶ 19.

³³¹ *Id.*, 25 FCC Rcd at 4199-4201 ¶¶ 36-40.

³³² *Id.*, 25 FCC Rcd at 4191 ¶ 20, 4199 ¶ 36.

³³³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

raised more general concerns about home roaming and data roaming. In the 2010 *Roaming Order on Reconsideration*, we modified the automatic roaming obligation that the Commission adopted for voice and related services in 2007 by eliminating the home roaming exclusion.³³⁴ Accordingly, home roaming concerns are no longer an issue. We also conclude that concerns on data roaming would be more appropriately addressed in the 2010 *Roaming Second Further Notice* proceeding.³³⁵ In this notice, we are considering whether to extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services.³³⁶ Any decisions reached or rules adopted in the 2010 *Roaming Second Further Notice* proceeding will apply with equal force to AT&T and Verizon Wireless. Furthermore, we do not find that resolving the petitions for reconsideration of the *Verizon Wireless-ALLTEL Order* prior to the grant of these applications is needed to prevent any transaction-specific harm. Finally, because the Verizon Wireless-ALLTEL roaming conditions apply expressly to the ALLTEL agreements that Verizon acquired through the transaction, we decline to apply the roaming conditions imposed in the *Verizon Wireless-ALLTEL Order* to AT&T as a condition of this transaction because AT&T [REDACTED] as part of this transaction.

B. Handset Availability and Exclusive Handset Agreements

102. Certain petitioners raise concerns that the only potential competition to AT&T and Verizon Wireless after the transaction would be small and rural operators who are unable to offer the latest handsets.³³⁷ For example, Cellular South contends that if AT&T is permitted to compete with it, AT&T will be able to offer handsets with a variety of features that ALLTEL was not able to offer and Cellular South cannot offer.³³⁸ Cellular South further states that AT&T would thus have an overwhelming competitive advantage over Cellular South “since most customers primarily choose their service provider on the basis of its handset offerings.”³³⁹ PSC also argues that small and rural carriers are at a considerable marketplace disadvantage and states that small service providers have found it difficult to obtain an adequate selection of handsets compliant with hearing aid compatibility requirements in the necessary quantities.³⁴⁰ RTG claims that the inability of small and rural operators to sell their subscribers handsets that are subject to exclusive handset agreements places the smaller and rural carriers at a significant competitive disadvantage.³⁴¹ NTCA asserts that the competitive advantage that nationwide carriers have is the ability to offer the latest technology to consumers years before the small, rural carriers are able to offer such technology, and small, rural service providers will not survive if they lose their high-volume users to AT&T and Verizon Wireless.³⁴² In light of these concerns, several parties contend that the Commission should condition its approval of this transaction on AT&T and Verizon Wireless permitting all of their handsets to be available to all Tier III rural wireless carriers throughout the United

³³⁴ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190 ¶ 18.

³³⁵ See generally *Roaming Second Further Notice*.

³³⁶ *Id.*

³³⁷ Cellular South Petition at 6; RTG Petition at 8; NTCA Aug. 7, 2009 *Ex Parte* at 3.

³³⁸ Cellular South Petition at 6.

³³⁹ *Id.*

³⁴⁰ PSC Reply at 5.

³⁴¹ RTG Petition at 14.

³⁴² NTCA Aug. 7, 2009 *Ex Parte* at 3-4.

States,³⁴³ condition its approval on a commitment from AT&T not to enforce its existing exclusive handset agreements with Apple and RIM or enter into similar agreements in the future;³⁴⁴ or defer action on the transaction until the Commission resolves the separate exclusive handset proceeding.³⁴⁵

103. In response to these concerns regarding exclusive handset agreements, the Applicants state that the Commission should not consider these claims because they are not transaction-specific.³⁴⁶ The Applicants maintain that the Commission has a longstanding policy of not considering arguments in a transaction proceeding that are more appropriately addressed in other Commission proceedings.³⁴⁷ In addition, the Applicants state that the Commission does not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.³⁴⁸ The Applicants conclude that the Commission should dismiss the claims in this proceeding and consider them, if at all, in an industry-wide proceeding.³⁴⁹

104. We were presented with similar concerns and requests for relief during our recent consideration of the AT&T and Centennial merger.³⁵⁰ As we did in that proceeding, we find here that the conditions proposed regarding exclusive handset agreements are not narrowly tailored to prevent a transaction-specific harm.³⁵¹ We find that the proposed conditions instead apply broadly across the industry and are therefore more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments.³⁵² RCA has filed a petition asking that the Commission review exclusive handset agreements on an industry-wide basis, and based on a full record in that proceeding, the Commission will be able to determine whether any action is needed in this area, and if so, to develop a comprehensive approach that addresses exclusive handset agreements.³⁵³ We therefore decline to impose any of the above proposed conditions.

C. Customer Transition Matters

105. In evaluating this transaction, we seek to ensure that AT&T's transition of customers from a CDMA network in most markets to GSM operations is as successful as possible with minimal disruption to customers. AT&T states that customers will be transitioned to AT&T's GSM network and will receive a GSM-compatible wireless handset in order to access the full range of services available on

³⁴³ RTG Petition at 14; PSC Reply at 5-6. NTCA states that the Commission should require, if it approves this transaction, the elimination of all exclusive handset agreements. NTCA Aug. 7, 2009 *Ex Parte* at 5.

³⁴⁴ Cellular South Petition at 14-15.

³⁴⁵ Cellular South Reply at 4-5. See Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008); Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, *Public Notice*, 23 FCC Rcd 14873 (2008).

³⁴⁶ Joint Opposition at 27-28.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 28.

³⁴⁹ *Id.* at 29.

³⁵⁰ See *AT&T-Centennial Order*, 24 FCC Rcd at 13971-72 ¶¶ 139-41.

³⁵¹ See *id.*, 24 FCC Rcd at 13972 ¶ 141.

³⁵² See *id.*

³⁵³ See *id.*

AT&T's network.³⁵⁴ Sprint Nextel argues that there is insufficient information on the record reflecting whether AT&T will maintain the CDMA network, and that without this information, the Commission cannot perform a complete examination of whether the transaction is in the public interest.³⁵⁵ Sprint Nextel questions the impact on wireless customers, including issues such as cost, quality of service, and the length of the transition.³⁵⁶ The SDPUC shares Sprint Nextel's concern that the Applicants have not provided sufficient information regarding AT&T's planned overbuild of the existing CDMA network to GSM.³⁵⁷ Among other things, the SDPUC queries about AT&T's plans for the type of GSM technology to be deployed in South Dakota, its plans for future upgrades such as 3.5G and 4G LTE in the state, and its customer policies (e.g., replacement phones, early termination fees).³⁵⁸

106. AT&T responds that it has significant experience transitioning customers from one technology to another, in particular, transitioning CDMA properties into its existing GSM network technology.³⁵⁹ AT&T states that it will have customer policies in place to facilitate a seamless transition for customers without any interruption in service.³⁶⁰

107. *Transition Framework.* AT&T provided a copy of its Transition Services Agreement ("TSA") with Verizon Wireless and its transition plans pursuant to the Information Request.³⁶¹ The TSA addresses a wide range of functions, such as customer care, network services, collections, retail stores, sales reporting, and supply chain management.³⁶² The TSA specifies that Verizon Wireless will provide transition services for a period of 12 months, effective from the date of the Agreement.³⁶³ Following the closing of the proposed transaction, AT&T currently plans [REDACTED].³⁶⁴

108. *Length of Transition.* With respect to the length of the transition, AT&T states that [REDACTED].³⁶⁵ AT&T estimates [REDACTED],³⁶⁶ [REDACTED],³⁶⁷ [REDACTED].³⁶⁸

³⁵⁴ AT&T First Partial Response at 18; *see also* AT&T, Media Newsroom, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service ("AT&T Press Release Regarding Acquisition from Verizon Wireless"), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26803> (last visited June 21, 2010).

³⁵⁵ Sprint Nextel Comments at 8-9.

³⁵⁶ *Id.* at 9-10.

³⁵⁷ SDPUC Reply at 4.

³⁵⁸ *Id.* at 4-6.

³⁵⁹ Joint Opposition at 12.

³⁶⁰ *Id.*

³⁶¹ AT&T Supplemental Response of Apr. 16, 2010 at II.11.1A.

³⁶² AT&T Supplemental Response of Apr. 16, 2010.

³⁶³ *Id.* at II.11.6A.

³⁶⁴ AT&T Second Partial Response of Dec. 17, 2009 at 14-15.

³⁶⁵ *Id.* at 5; *see also* AT&T Press Release Regarding Acquisition from Verizon Wireless.

³⁶⁶ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12. AT&T [REDACTED]. AT&T Supplemental Response of June 2, 2010 at 2.

³⁶⁷ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12.

³⁶⁸ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12.

[REDACTED]³⁶⁹ [REDACTED]. AT&T states, however, that timing of the transition is dependent upon a number of factors that it cannot control.³⁷⁰

109. *Service.* Prior to the transition to AT&T's 3G GSM network,³⁷¹ AT&T intends [REDACTED].³⁷² AT&T states that as soon as its 3G network is ready for customers within a given area, the company plans to begin migrating customers.³⁷³ [REDACTED]³⁷⁴ According to AT&T, [REDACTED].³⁷⁵ AT&T states that [REDACTED].³⁷⁶

110. *Handsets.* AT&T states that when the CDMA divestiture customers are migrated to AT&T's GSM network, they will have full access to handset offerings and services offered to new customers by AT&T at that time.³⁷⁷ [REDACTED]³⁷⁸ AT&T states that [REDACTED].³⁷⁹ According to AT&T, its current plans [REDACTED]. [REDACTED]³⁸⁰ In particular, [REDACTED].³⁸¹ AT&T states that [REDACTED].³⁸²

111. *Pricing.* With respect to pricing, AT&T plans [REDACTED].³⁸³ AT&T [REDACTED].³⁸⁴ AT&T states that [REDACTED].³⁸⁵

112. *Early Termination Fees.* AT&T states that [REDACTED].³⁸⁶ [REDACTED]³⁸⁷

³⁶⁹ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12.

³⁷⁰ AT&T Second Partial Response of Dec. 17, 2009 at 5-6.

³⁷¹ *Id.* at 8; *see also* AT&T Press Release Regarding Acquisition from Verizon Wireless.

³⁷² AT&T Second Partial Response of Dec. 17, 2009 at 8. AT&T states that [REDACTED]. AT&T Supplemental Response of Mar. 24, 2010 at 3.

³⁷³ AT&T Second Partial Response of Dec. 17, 2009 at 8; *see also* South Dakota Public Utilities Commission, Frequently Asked Questions about Alltel and AT&T, *available at* <http://puc.sd.gov/alltel-att/default.aspx> (last visited June 21, 2010).

³⁷⁴ AT&T Supplemental Response of Mar. 24, 2010 at 1.

³⁷⁵ *Id.* [REDACTED] *Id.*

³⁷⁶ *Id.*

³⁷⁷ AT&T First Partial Response at 26.

³⁷⁸ AT&T Second Partial Response of Dec. 17, 2009 at 9, 11-12; AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁷⁹ AT&T Second Partial Response of Dec. 17, 2009 at 9; AT&T Supplemental Response of Mar. 24, 2010 at 1-2 ([REDACTED]).

³⁸⁰ AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁸¹ AT&T Second Partial Response of Dec. 17, 2009 at 9.

³⁸² *Id.*; *see also* AT&T Supplemental Response of Mar. 24, 2010 at 2. [REDACTED] AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁸³ AT&T Second Partial Response of Dec. 17, 2009 at 9, 19.

³⁸⁴ *Id.* at 9-10. AT&T notes that [REDACTED]. *Id.* at 9.

³⁸⁵ *Id.* at 9-10.

³⁸⁶ AT&T Supplemental Response of Mar. 24, 2010 at 2; *see also* AT&T Second Partial Response of Dec. 17, 2009 at 10, 19. AT&T states that [REDACTED]. *Id.*

113. *Prepaid Phones.* [REDACTED]³⁸⁸ AT&T states that [REDACTED].³⁸⁹ AT&T states that it will provide timely communications to as many prepaid customers as possible to enable a smooth transition.

114. *CDMA Network.* [REDACTED]³⁹⁰ AT&T will [REDACTED].³⁹¹ AT&T plans to [REDACTED].³⁹² AT&T has [REDACTED].³⁹³ Rather, AT&T plans to [REDACTED].³⁹⁴

115. *Discussion.* Based upon the record before us, we anticipate a smooth transition of the divestiture properties. AT&T has experience in transitioning customers on both CDMA and GSM networks, and we believe they have the experience and resources to ensure a smooth transition. At the same time, we will monitor the situation in the service areas to ensure that the transition is smooth and is in the public interest.

D. Divestiture Bidding Process

116. Verizon Wireless, advised by Morgan Stanley, conducted a bidding process in order to identify the buyers of the business units and authorizations that the Commission and the DOJ required be divested as a condition of approval of the proposed merger with ALLTEL.³⁹⁵ That process resulted in Verizon Wireless announcing an agreement with AT&T on May 8, 2009, regarding the sale of 79 markets and with Atlantic Tele-Network, Inc. ("ATN") on June 9, 2009, regarding the sale of the remaining 26 markets. CAPCC, NABOB,³⁹⁶ and Telephone USA³⁹⁷ challenge the bidding process, asserting that the process did not comply with the Commission's mandates regarding divestiture set forth in the *Verizon Wireless-ALLTEL Order*. These parties further claim that the bidding process was not fair and open, that the process did not provide adequate opportunities for businesses owned by minorities and socially disadvantaged groups to acquire any of the Divestiture Markets, and that decisions made and actions taken by Verizon Wireless and Morgan Stanley thwarted effective participation in the bidding process by minorities and socially disadvantaged groups.

(Continued from previous page) _____

³⁸⁷ AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁸⁸ AT&T Supplemental Response of Apr. 12, 2010 at 1. According to AT&T, [REDACTED]. *Id.*

³⁸⁹ AT&T Supplemental Response of Apr. 12, 2010 at 1. [REDACTED] *Id.*

³⁹⁰ AT&T Second Partial Response of Dec. 17, 2009 at 10.

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516-17 ¶ 159; *Verizon Communications*, 607 F.Supp.2d 1.

³⁹⁶ The Applicants state that CAPCC and NABOB fail to demonstrate standing to be a party to this proceeding. In particular, the Applicants state that CAPCC did not identify or offer evidence to show that its members will be harmed by the transaction, while NABOB attempts to articulate competitive or other harms to its members despite failing to identify the affected members or substantiating its claims of harm. Joint Opposition at 18 n.68. CAPCC and NABOB both dispute the Applicants' contentions regarding standing. CAPCC Reply at 2 n.2; NABOB Reply at 2-3. We do not consider it necessary to resolve the issue of CAPCC's and NABOB's standing. Given the nature of the concerns they raise, we decide to address the merits of their filings.

³⁹⁷ Telephone USA did not file an a petition to deny the Verizon Wireless-AT&T applications, but has filed a number of *ex partes* that address the bidding process employed by Verizon Wireless in connection with the divestiture of the 105 markets contemplated by the *Verizon Wireless-ALLTEL Order*.

117. The Applicants dispute these challenges to the bidding process. Verizon Wireless asserts that the bidding process complied with the requirements of the *Verizon Wireless-ALLTEL Order*. Verizon Wireless further states that it took steps to ensure active participation by minorities and socially disadvantaged groups, consistent with limitations imposed by the Final Judgment. In light of these competing characterizations, we have reviewed the extensive record regarding the conduct of the bidding process Verizon Wireless employed to identify proposed purchasers of the Divestiture Markets to determine whether the process complied with the requirements and language set out by the Commission in the *Verizon Wireless-ALLTEL Order*, and whether the process and the outcome thwarts achievement of the goals underlying the decisions of the Commission and the DOJ to require divestiture in 105 markets.

118. *Verizon Wireless-ALLTEL Order*. In the *Verizon Wireless-ALLTEL Order*, the Commission conditioned its approval of the proposed merger of Verizon Wireless and ALLTEL on the divestiture of operating units in five markets and upon the completion of divestitures in 100 markets that Verizon Wireless voluntarily committed to divest.³⁹⁸ Rejecting requests by some petitioners, the Commission declined to impose specific conditions on the 105 Divestiture Markets regarding how and to whom the assets should be divested, but made clear that the entire operating unit of either Verizon Wireless or ALLTEL must be divested in those markets.³⁹⁹ The Commission expressly observed that, “to provide greater assurance that the buyer will be an effective competitor, the DOJ is requiring that certain groups of CMAs be divested to a single purchaser.”⁴⁰⁰ Finally, in language that is significant to the petitioners’ concerns about the efficacy of the bidding process, the Commission declined requests for a right of first negotiation for select groups⁴⁰¹ and stated that, “[a]lthough we decline [requests by certain parties] to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets, we encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.”⁴⁰²

119. CAPCC, NABOB, and Telephone USA contend that the bidding process was not consistent with the Commission’s intentions in the *Verizon Wireless-ALLTEL Order*.⁴⁰³ In particular, CAPCC and Telephone USA state that the Commission included the language quoted above regarding minority-owned businesses in light of the agency’s well-understood concerns about diversity and a desire to encourage Verizon Wireless to act in ways that would increase the likelihood of divestiture to minority-owned entities.⁴⁰⁴ Telephone USA states Verizon Wireless tried to make it appear that it was helping minority bidders, but did not in fact improve the chances that a small, minority-owned business would be successful.⁴⁰⁵ CAPCC and Telephone USA assert that Verizon Wireless did not reach out to minority buyers and did not take the appropriate steps to encourage minority-owned businesses or members of socially disadvantaged groups that were interested in the markets to be divested.⁴⁰⁶ NABOB argues that

³⁹⁸ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516-17 ¶ 159.

³⁹⁹ *Id.*, 23 FCC Rcd at 17518 ¶ 162.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*, 23 FCC Rcd at 17517 ¶ 160.

⁴⁰² *Id.*, 23 FCC Rcd at 17518 ¶ 162.

⁴⁰³ CAPCC Petition at 3-4; NABOB Petition at 6; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4.

⁴⁰⁴ CAPCC Petition at 7; Telephone USA Jan. 25, 2010 *Ex Parte* at 2.

⁴⁰⁵ Telephone USA Jan. 25, 2010 *Ex Parte* at 2-3.

⁴⁰⁶ CAPCC Petition at 7; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4.

Morgan Stanley conducted a bidding process that erected barriers to minority participation and that minority bidders were not given serious consideration as potential purchasers.⁴⁰⁷ NABOB and Telephone USA assert that instead of an open and fair process, the bidding process was merely for “show,” and the winners were predetermined.⁴⁰⁸ NABOB and Telephone USA also have alleged that Verizon Wireless and Morgan Stanley stated a preference that one entity bid and win divestiture asset packages that could have been worth billions of dollars.⁴⁰⁹ According to these parties, such a statement undermines the credibility of the efforts that Verizon Wireless and Morgan Stanley made to seek and encourage small entities to participate in the bidding process and acquire such assets.⁴¹⁰

120. Verizon Wireless responds that it conducted an open and inclusive process that provided opportunities to minority and socially disadvantaged firms.⁴¹¹ For example, early in the process, Verizon Wireless asked the Minority Media Telecommunications Council (“MMTC”) to identify minority-owned businesses that would be in a position to participate in the divestiture sale process.⁴¹² According to Verizon Wireless, Morgan Stanley made every effort to treat all bidders equally in the sale process.⁴¹³ Verizon Wireless further contends that it specifically involved and encouraged minority and socially disadvantaged businesses to participate in the bidding process, and made efforts to include such entities at each stage of the process.⁴¹⁴ Regarding the claims that it and Morgan Stanley indicated they preferred to sell all the markets to a single bidder, Verizon Wireless states that neither it nor Morgan Stanley “told bidders that Verizon Wireless favored bids that offered to purchase all of the Divested Assets.”⁴¹⁵ Rather, according to Verizon Wireless, one of the letters sent to potential bidders regarding the bidding procedures indicated that “Verizon Wireless was open to proposals for the divestiture properties in their entirety, on a multistate basis, or for individual clusters so long as they satisfied the three objectives” identified by Verizon Wireless.⁴¹⁶

121. For the reasons set forth in greater detail below, we find that Verizon Wireless conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*. In the *Verizon Wireless-ALLTEL Order*, the Commission expressly declined “to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer,

⁴⁰⁷ NABOB Petition at 6-7.

⁴⁰⁸ *Id.* at 6-8; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4, Attach. 1 at 8. NABOB and Telephone USA also argue that there was a “swap” of assets between AT&T and Verizon Wireless that the petitioners allege suggests that the bidding process was for show and the winners were predetermined. NABOB Petition at 7-8; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4, Attach. 1 at 8; *Ex Parte* Letter from Vicki Iseman, Alcalde & Fay, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. 1 at 1-2 (Mar. 16, 2010) (re meeting with David Goldman of Chairman Julius Genachowski’s office); *see also* CAPCC Petition at 3-8.

⁴⁰⁹ NABOB Petition at 6; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 5.

⁴¹⁰ NABOB Petition at 6; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 6.

⁴¹¹ Joint Opposition at 22-25. *See, e.g.*, Verizon Wireless Information Request Response at 00001148, 00001279.

⁴¹² Joint Opposition at 22.

⁴¹³ Verizon Wireless Information Request Response at 19.

⁴¹⁴ Joint Opposition at 22-25.

⁴¹⁵ Verizon Wireless Information Request at 17.

⁴¹⁶ Verizon Wireless Information Request at 17. These objectives were (i) to realize the highest possible value, (ii) to maximize certainty of closing given the deadlines and process requirements imposed by the Department of Justice, and (iii) to consummate any such transactions expeditiously.

or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer.”⁴¹⁷ Instead of imposing such conditions, the Commission chose “to encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.”⁴¹⁸ This language includes no directive regarding the specific ways in which Verizon Wireless should assist regional, local, and rural wireless providers, new entrants, small businesses and businesses owned by minorities or socially disadvantaged groups in seeking to acquire Divestiture Markets. The record before us indicates that Verizon Wireless did implement mechanisms to assist the groups listed above during the bidding process. Verizon Wireless took several steps to reach out to small businesses and businesses owned by minorities or socially disadvantaged groups. Indeed, in some instances, Verizon Wireless and Morgan Stanley waived certain procedures at the request of Telephone USA, which was interested in becoming a new entrant in the wireless services market.⁴¹⁹

122. While it is possible that Verizon Wireless could have taken more steps to aid minority-owned entities seeking to participate in the bidding, we must evaluate these applications in accordance with the relevant language in the Commission’s *Verizon Wireless-ALLTEL Order*. We find that Verizon Wireless’s conduct and interactions with potential and actual bidders were in keeping with that language. In future transactions, the Commission may consider providing more detailed guidance about those specific steps, such as flexibility in divestiture goals and in financing commitment requirements, that divesting entities can take to encourage new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups to acquire Commission-ordered divestiture assets.

123. *Financing.* Petitioners allege that the bidding process does not meet the public interest standard because Verizon Wireless imposed strict financing rules that disadvantaged minority firms. Specifically, Verizon Wireless found it appropriate to require “committed financing” in connection with the bids submitted for any of the properties to be divested.⁴²⁰ CAPCC, NABOB, and Telephone USA contend that Verizon Wireless did not address the specific concerns that affect minority-owned businesses, such as the disadvantages that minority-owned entities face in the financing marketplace.⁴²¹ CAPCC, NABOB, and Telephone USA assert that the requirements imposed on bidders regarding financing served to discourage effective participation by minority and socially disadvantaged groups. According to CAPCC and Telephone USA, for minority-owned entities one of the most significant barriers to entry is the ability to obtain financing.⁴²² CAPCC and Telephone USA state that Verizon Wireless did not provide a period of exclusive negotiation for socially disadvantaged groups,⁴²³ which

⁴¹⁷ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

⁴¹⁸ *Id.*

⁴¹⁹ *Ex Parte* Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 09-119, at 2 (Apr. 8, 2010) (“Verizon Wireless Apr. 8, 2010 *Ex Parte*”) (“[A]lthough Telephone USA had joined the process much later than other bidders, Verizon Wireless waived the requirement that it have a Nondisclosure Agreement in place prior to gaining access to confidential data on the properties so that it could participate in an initial bidding round and not be disadvantaged by any time delay required to execute a Nondisclosure Agreement. No other bidder received this waiver.”).

⁴²⁰ Joint Opposition at 26 (discussing the “financial resources necessary to ensure that the proposed transaction would be timely consummated”); Verizon Wireless Information Request Response at 00001570, 00001418-1420.

⁴²¹ CAPCC Reply at 3; NABOB Reply at 4; Telephone USA Jan. 25, 2010 *Ex Parte* at 3.

⁴²² CAPCC Petition at 6-7; CAPCC Reply at 4-5; Telephone USA Jan. 25, 2010 *Ex Parte* at 3.

⁴²³ [REDACTED] See Verizon Wireless Information Request Response at 00001564-1565.